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111TH CONGRESS
1ST SESSION

H. R. 2137

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and title 5, United States Code, to require individual and group health insurance coverage and group health plans and Federal employees health benefit plans to provide coverage for routine HIV screening.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2009

Ms. WATERS (for herself, Mr. STARK, Mrs. CHRISTENSEN, Ms. LEE of California, Mr. MEEKS of New York, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor, Ways and Means, and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and title 5, United States Code, to require individual and group health insurance coverage and group health plans and Federal employees health benefit plans to provide coverage for routine HIV screening.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the ''Routine HIV Screening Coverage Act of 2009''.

(b) FINDINGS.—Congress finds the following:

(1) HIV/AIDS continues to infect and kill thousands of Americans, 25 years after the first cases were reported.

(2) It has been estimated that at least 1.6 million Americans have been infected with HIV since the beginning of the epidemic and over 500,000 of them have died.

(3) The HIV/AIDS epidemic has disproportionately impacted African-Americans and Hispanic-Americans and its impact on women is growing.

(4) It has been estimated that almost one quarter of those infected with HIV in the United States do not know they are infected.

(5) Not all individuals who have been infected with HIV demonstrate clinical indications or fall into high risk categories.

(6) The Centers for Disease Control and Prevention has determined that increasing the proportion of people who know their HIV status is an essential component of comprehensive HIV/AIDS treatment and prevention efforts and that early di-

agnosis is critical in order for people with HIV/AIDS to receive life-extending therapy.

(7) On September 21, 2006, the Centers for Disease Control and Prevention released new guidelines that recommend routine HIV screening in health care settings for all patients aged 13–64, regardless of risk.

(8) Standard health insurance plans generally cover HIV screening when there are clinical indications of infection or when there are known risk factors present.

(9) Requiring health insurance plans to cover routine HIV screening could play a critical role in preventing the spread of HIV/AIDS and allowing infected individuals to receive effective treatment.

SEC. 2. COVERAGE FOR ROUTINE HIV SCREENING UNDER GROUP HEALTH PLANS, INDIVIDUAL HEALTH INSURANCE COVERAGE, AND FEHBP.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—Subpart 2 of part A of title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

"SEC. 2708. COVERAGE FOR ROUTINE HIV SCREENING.

"(a) COVERAGE.—A group health plan, and a health insurance issuer offering group health insurance coverage, shall provide coverage for routine HIV screening under terms and conditions that are no less favorable than the terms and conditions applicable to other routine health screenings.

"(b) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage, shall not—

"(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) deny coverage for routine HIV screening on the basis that there are no known risk factors present, or the screening is not clinically indicated, medically necessary, or pursuant to a referral, consent, or recommendation by any health care provider;

"(3) provide monetary payments, rebates, or other benefits to individuals to encourage such individuals to accept less than the minimum protections available under this section;

"(4) penalize or otherwise reduce or limit the reimbursement of a provider because such provider

provided care to an individual participant or beneficiary in accordance with this section;

''(5) provide incentives (monetary or otherwise) to a provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

''(6) deny to an individual participant or beneficiary continued eligibility to enroll or to renew coverage under the terms of the plan, solely because of the results of an HIV test or other HIV screening procedure for the individual or any other individual.

''(c) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to require an individual who is a participant or beneficiary to undergo HIV screening; or

''(2) as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to HIV screening, except that such deductibles, coinsurance or other cost-sharing may not be greater than the deductibles, coinsurance, or other cost-sharing imposed on other routine health screenings.

''(d) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 715(d) of the Employee Retirement Income Security Act

of 1974 with respect to the requirements of this section as if such section applied to such plan.

''(e) PREEMPTION.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that requires coverage of at least the coverage of HIV screening otherwise required under this section.''.

(2) ERISA AMENDMENTS.—(A) Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

''SEC. 715. COVERAGE FOR ROUTINE HIV SCREENING.

''(a) COVERAGE.—A group health plan, and a health insurance issuer offering group health insurance coverage, shall provide coverage for routine HIV screening under terms and conditions that are no less favorable than the terms and conditions applicable to other routine health screenings.

''(b) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage, shall not—

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under

the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) deny coverage for routine HIV screening on the basis that there are no known risk factors present, or the screening is not clinically indicated, medically necessary, or pursuant to a referral, consent, or recommendation by any health care provider;

''(3) provide monetary payments, rebates, or other benefits to individuals to encourage such individuals to accept less than the minimum protections available under this section;

''(4) penalize or otherwise reduce or limit the reimbursement of a provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(5) provide incentives (monetary or otherwise) to a provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

''(6) deny to an individual participant or beneficiary continued eligibility to enroll or to renew coverage under the terms of the plan, solely because of the results of an HIV test or other HIV screening procedure for the individual or any other individual.

''(c) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to require an individual who is a participant or beneficiary to undergo HIV screening; or

''(2) as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to HIV screening, except that such deductibles, coinsurance or other cost-sharing may not be greater than the deductibles, coinsurance, or other cost-sharing imposed on other routine health screenings.

''(d) NOTICE UNDER GROUP HEALTH PLAN.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

''(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 2010;

whichever is earliest.

''(e) PREEMPTION, RELATION TO STATE LAWS.—

''(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that requires coverage of at least the coverage of HIV screening otherwise required under this section.

''(2) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans.''.

(B) Section 732(a) of such Act (29 U.S.C. 1191a(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 715''.

(C) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 714 the following new item:

''Sec. 715. Coverage for routine HIV screening.''.

(3) INTERNAL REVENUE CODE AMENDMENTS.—(A) Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by inserting after section 9813 the following:

''SEC. 9814. COVERAGE FOR ROUTINE HIV SCREENING.

''(a) COVERAGE.—A group health plan shall provide coverage for routine HIV screening under terms and con-

ditions that are no less favorable than the terms and conditions applicable to other routine health screenings.

''(b) PROHIBITIONS.—A group health plan shall not—

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) deny coverage for routine HIV screening on the basis that there are no known risk factors present, or the screening is not clinically indicated, medically necessary, or pursuant to a referral, consent, or recommendation by any health care provider;

''(3) provide monetary payments, rebates, or other benefits to individuals to encourage such individuals to accept less than the minimum protections available under this section;

''(4) penalize or otherwise reduce or limit the reimbursement of a provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(5) provide incentives (monetary or otherwise) to a provider to induce such provider to provide care

to an individual participant or beneficiary in a manner inconsistent with this section; or

''(6) deny to an individual participant or beneficiary continued eligibility to enroll or to renew coverage under the terms of the plan, solely because of the results of an HIV test or other HIV screening procedure for the individual or any other individual.

''(c) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to require an individual who is a participant or beneficiary to undergo HIV screening; or

''(2) as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to HIV screening, except that such deductibles, coinsurance or other cost-sharing may not be greater than the deductibles, coinsurance, or other cost-sharing imposed on other routine health screenings.''.

(B) The table of sections of such subchapter is amended by inserting after the item relating to section 9813 the following new item:

''Sec. 9814. Coverage for routine HIV screening.''.

(C) Section 4980D(d)(1) of such Code is amended by striking ''section 9811'' and inserting ''sections 9811 and 9814''.

(b) APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.—(1) Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2753 the following new section:

"SEC. 2754. COVERAGE FOR ROUTINE HIV SCREENING.

"(a) IN GENERAL.—The provisions of section 2708 (other than subsection (d)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

"(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 715(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.".

(2) Section 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2)) is amended by striking "section 2751" and inserting "sections 2751 and 2754".

(c) APPLICATION UNDER FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP).—Section 8902 of title 5, United States Code, is amended by adding at the end the following new subsection:

''(p) A contract may not be made or a plan approved which does not comply with the requirements of section 2708 of the Public Health Service Act.''.

(d) EFFECTIVE DATES.—(1) The amendments made by subsections (a) and (c) apply with respect to group health plans and health benefit plans for plan years beginning on or after January 1, 2010.

(2) The amendments made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 2010.

(e) COORDINATION OF ADMINISTRATION.—The Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under the provisions of this section (and the amendments made thereby) are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy

that avoids duplication of enforcement efforts and assigns priorities in enforcement.

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